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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 09/866,154 | 05/24/2001 | Michael Alvarez Cohen | 13218-002001 | 5614 |

26181 7590 06/09/2003
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[REDACTED] EXAMINER

RICHMAN, GLENN E

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3764

DATE MAILED: 06/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

| | |
|--------------------------------------|--------------------------------------|
| Application No. 09/866,154 | Applicant(s) Alvarez et al |
| Examiner Glenn Richman | Art Unit 3764 |



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Mar 24, 2003
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.
- Disposition of Claims
- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-9, 13, and 14 is/are allowed.
- 6) Claim(s) 10-12 and 15 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 and 4
- 4) Interview Summary (PTO-413) Paper No(s). _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

Art Unit: 3764

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

- (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
- (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 10-12, and 15 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by

Netpulse Makes Working Out More Than A Calorie Burning Session , apge 1-2, 3/1998.

3. Claims 1-9, 13, and 14 are allowed.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure Netpulse 24 Hour Fitness Partners with Netpulse, Press Release from Internet, page 1, 3/1998.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is (703) 308-3170. The examiner can normally be reached Tuesday through Thursday from 7:30 AM to 6:00 PM Eastern time. The facsimile number for Art Unit 3764 is (703) 308-0758. The facsimile number for submitting formal papers to Technology Center 3700 is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 3700 receptionist whose telephone number is (703) 308-0858 or to Customer Service at (703) 306-6789.

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June 3, 2003


Glenn Richman
Primary Examiner
AU 3764